IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12475 of 2005
With
CIVIL APPLICATION No.6857 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

RM YADAV
Versus
STATE OF GUJARAT AND OTHERS

==========

Appearance :
MR PARESH UPADHYAY for the Petitioner
MR DA DESAI, ASSISTANT GOVERNMENT PLEADER for Respondent Nos.1 and 2.
MR PV HATHI for Respondent No.3.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 25/08/2005

ORAL JUDGMENT

Draft amendment is granted. To be carried out in the main petition forthwith.

Rule. Mr.D.A.Desai, learned Assistant Government Pleader waives service of notice of rule on behalf of respondent Nos.1 and 3. Learned advocate Mr.P.V.Hathi waives service of notice of rule on behalf of respondent No.3.

With the consent of the parties, the matter is taken up for final disposal today.

By filing this petition, the petitioner has challenged the action of the respondent No.3 – Corporation in not giving him the pay scale of Rs.8000-135000 as according to the petitioner, he is entitled to said pay scale from 01.01.1996.

During the pendency of this petition, by way

of amendment, the petitioner has placed on record a copy of the order passed by the Managing Director of respondent No.3 – Corporation dated 21.07.2005 by which the petitioner has been placed in the pay scale of Rs.5500-9000 with effect from 01.01.1996 as Monitory Officer by taking away the pay scale granted to him i.e. of Rs.6500-10500 as well as of Rs.800-13500. By way of amendment, the petitioner has challenged the aforesaid order.

Mr.Upadhyay for the petitioner submitted that the aforesaid order regarding reducing the pay scale of the petitioner as well as recovering the amount in question is illegal, arbitrary and in violation of principle of natural justice. It is submitted by him that the aforesaid order is passed by the Managing Director of the respondent No.3 – Corporation in view of the communication received by the Corporation from the Section Officer of the Agricultural and Cooperation

Department, Sachivalaya, Gandhinagar dated 8th July 2005.

The aforesaid factual aspect is not in dispute. In my view, since the order in question is having civil consequences, before passing the said order of reducing the pay scale of the petitioner from back date as well as consequential order of recovery should not have been passed without giving appropriate opportunity to the petitioner to have his say in the subject matter. Since the order in question is passed in violation of principle of natural justice, only on this short ground, the petition is required to be allowed. The Secretary, Agricultural and Cooperation Department is directed to hear the petitioner and thereafter pass appropriate order in accordance with law. The said decision thereafter may be communicated to respondent No.3 – Corporation. The aforesaid order in question of respondent No.3 dated

21.07.2005 is accordingly quashed and set aside. Similarly, communication sent by the Agricultural and Cooperation Department to the Managing Director of respondent No.3 – Corporation dated 08.07.2005 is also quashed and set aside

The Secretary, Agricultural and Cooperation Department shall hear the petitioner and thereafter may pass appropriate order in accordance with law as indicated above.

It is clarified that this Court has not expressed any opinion on the merits of the matter and has not adjudicated the matter on any other points which are raised in this petition. It is for the Secretary to decide the matter in accordance with law and pass appropriate order. The petition is allowed only on the short ground as indicated above.

Petition is allowed. Rule is made absolute to

the aforesaid extent with no order as to costs.

In view of the order passed in the main Special Civil Application, no order in Civil Application and the same stands disposed of accordingly.

(P.B.MAJMUDAR, J.)

*Shitole